

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT LONG,

Plaintiff-Appellant,

v

FEDERAL HOME LOAN MORTGAGE
CORPORATION, AMC MORTGAGE,
AMERIQUEST MORTGAGE COMPANY, and
ABN AMRO MORTGAGE GROUP,

Defendants-Appellees,

and

OAKLAND COUNTY TREASURER and JOHN
DOE,

Defendants.

UNPUBLISHED

June 30, 2011

No. 297438

Oakland Circuit Court

LC No. 2009-099365-CH

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Plaintiff Robert Long appeals as of right the trial court's order granting summary disposition to defendants.¹ Plaintiff lost his home to foreclosure and now seeks to set aside the sheriff's deed from the forced sale of his home. We affirm.

Plaintiff's payments on the mortgage originally granted by defendant ABN AMRO Mortgage Group became delinquent. The original principal amount due on plaintiff's mortgage was \$192,000. Foreclosure proceedings were commenced, and defendant Federal Home Loan Mortgage Corporation purchased plaintiff's home with a credit bid of \$169,558.04. In response

¹ Although plaintiff named defendants Oakland County Treasurer and John Doe as defendants in his complaint, he made no substantive claims against them and they have not participated in this action. We make reference to the remaining defendants only.

to the foreclosure sale of his home, plaintiff sued defendants on multiple grounds and requested that the sheriff's deed from the sale be set aside. The trial court granted summary disposition in favor of defendants.

On appeal, plaintiff again argues that the sheriff's deed is invalid for multiple reasons, apparently none of which were presented to the trial court. Because the issues are unpreserved, we review for plain error. See *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004). In order to constitute error requiring reversal, plain error must be outcome-determinative. See generally *Guerrero v Smith*, 280 Mich App 647, 657-658; 761 NW2d 723 (2008).

Plaintiff first argues that the sheriff's deed from the foreclosure sale should be set aside because the auction was not a public auction as required by MCL 600.3216. MCL 600.3216 sets forth the time and place requirements for a mortgage foreclosure by advertisement sale. The statute provides:

The sale shall be at public sale, between the hour of 9 o'clock in the forenoon and 4 o'clock in the afternoon, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder.
[MCL 600.3216.]

This Court's goal when interpreting a statute "is to ascertain and give effect to the intent of the Legislature by enforcing plain language as it is written." *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 276; 730 NW2d 523 (2006). "This Court will not read anything into a statute that is not within the manifest intent of the Legislature as gleaned from the language of the statute itself." *Tyson Foods, Inc v Dep't of Treasury*, 276 Mich App 678, 690; 741 NW2d 579 (2007).

Plaintiff argues that there is no evidence that the auction took place, specifically because there were no "witnesses" to the auction and members of the public did not make bids for the home. However, a mortgage foreclosure sale by advertisement is valid even if the mortgagee is the only bidder. *Detroit Trust Co v Agozzinio*, 280 Mich 402, 406; 273 NW 747 (1937). In *Detroit Trust Co*, the Court held that "[s]tatutory foreclosures should not be set aside without some very good reasons therefor." *Id.* (citation omitted). The Court further held that the fact that the only bidder at a sale was the holder of the mortgage note did not constitute grounds for setting aside the sale. *Id.* Thus, it follows that if members of the public do not witness a sale or participate in it, the sale need not be set aside. Further, the plain language of the statute does not require that there be witnesses or bids from the public in order to validate a sale, and we will not read those requirements into the statutory language. See *Tyson Foods, Inc*, 276 Mich App at 690.

Next, plaintiff argues that because there is no evidence that consideration was exchanged at the auction, the sale must be set aside. Plaintiff also argues that Federal Home Loan Mortgage Corporation was not entitled to make a credit bid at the auction. Thus, the issue is whether Federal Home Loan Mortgage Corporation could properly use a credit bid to purchase plaintiff's

home; if a credit bid was permissible, the exchange of consideration was not necessary. In *Feldman v Equitable Trust Co*, 278 Mich 619, 620-621, 625; 270 NW 809 (1937), the Court explained that the party who has the right to foreclose the mortgage by advertisement may enter a credit bid at the foreclosure sale and is not required to tender the amount of the bid to the sheriff at the sale. The reason such a party is not required to tender the amount of its bid is because the exchange of money would be an “idle gesture,” unless the bid exceeds the unpaid balance on the mortgage. *Id.* at 622 (citation omitted); see *New Freedom Mtg Corp v Globe Mtg Corp*, 281 Mich App 63, 68; 761 NW2d 832 (2008).

The record in this case does not indicate whether Federal Home Loan Mortgage Corporation was the party who had the right to foreclose. However, even assuming Federal Home Loan Mortgage Corporation was not such a party, plaintiff cannot establish that permitting the corporation to enter a credit bid constituted outcome-determinative error. See generally *Guerrero*, 280 Mich App at 657-658. The actions of Federal Home Loan Mortgage Corporation did not impact plaintiff’s ability to exercise his right to redeem his home within the statutory redemption period. Whether Federal Home Loan Mortgage Corporation actually deposited the money or pledged the money does not change the procedure for redemption or the redemption price. Even if we ordered the sale set aside, a resale could be held that is conditioned on acceptance of a bid equal to or greater than the bid at the former sale. See *Northwestern Loan & Discount Corp v Scully*, 256 Mich 202, 203-204; 239 NW 352 (1931). There is no error requiring reversal because setting aside the deed would merely require a resale, with deposit of the winning bid at the time of the sale. The amount required for redemption of the home could remain the same or increase.

Plaintiff also argues that the bid was a violation of MCL 600.3280 because, according to plaintiff, Federal Home Loan Mortgage Corporation should not have been permitted to make a credit bid that is higher than what he claims is the actual value of the home. Plaintiff’s claims are without merit. MCL 600.3280 provides a defense to a mortgagor when property is sold for less than its true value; it is not applicable to sales of property for more than the true value. See MCL 600.3280; *Pulleyblank v Cape*, 179 Mich App 690, 694; 446 NW2d 345 (1989). Assuming, for purposes of resolving the issue, that plaintiff’s home sold for higher than its true value, MCL 600.3280 was not violated by the sale. Further, plaintiff is not entitled to any relief because he was unable to redeem his home based on the amount of the credit bid. This Court in *Pulleyblank*, 179 Mich App at 695, acknowledged that a mortgagee’s bid at a foreclosure sale may be so high that it “effectively preclude[s] the mortgagors from exercising their equity of redemption.” While the validity of such bids was not at issue, this Court’s opinion implicitly found no error in the practice.²

² We note that while the amount of the bid made by Federal Home Loan Mortgage Corporation may have, in effect, precluded plaintiff from redeeming his home, the amount of the bid was applied to plaintiff’s indebtedness. In that way, he benefited from the high amount of the bid.

Lastly, plaintiff argues that the bid in this case was contrary to the purpose and intent of the foreclosure by advertisement statutes, MCL 600.3201 *et seq.*, because the purpose of the legislation is to sell a home for its actual value through a public auction. This Court has previously examined the intent of the Legislature regarding these statutes. This Court held that the intent of the Legislature regarding the foreclosure statutes was to force the mortgagee to elect a remedy and prevent any double recovery of debt. *Church & Church, Inc v A-1 Carpentry*, 281 Mich App 330, 341; 766 NW2d 30 (2008), vacated in part on other grounds 483 Mich 885 (2009). There is no support, statutory or otherwise, for plaintiff's argument that the purpose of the foreclosure statutes is to ensure that homes are sold for their actual value. Since plaintiff has not demonstrated any error regarding the proceedings in the trial court and the outcome of the case, he has failed to establish outcome-determinative plain error. See generally *Guerrero*, 280 Mich App at 657-658. Thus, plaintiff is not entitled to any relief.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering